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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/290,579	04/13/1999	HIDEKI ASADA	OSP-8028	1042

466 7590 01/09/2004

YOUNG & THOMPSON
745 SOUTH 23RD STREET 2ND FLOOR
ARLINGTON, VA 22202

EXAMINER

ALPHONSE, FRITZ

ART UNIT	PAPER NUMBER
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2675

14

DATE MAILED: 01/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/290,579

Applicant(s)

ASADA, HIDEKI

Examiner

Fritz Alphonse

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 4/3/03.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 90-109 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 90-109 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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DETAILED ACTION

1. This is in response to CPA and amendment filed on 4/3/03 in which claims 1-89 have been canceled and new claims 90-109 were added.
2. Applicant's request for reconsideration of the rejection of the last Office action is persuasive; therefore, the last Office action mailed on 9/2/03 is withdrawn.
3. Applicant, however, is advised to review MPEP 819 before filing a request for continued examination (RCE) from the claims previously claimed and examined. See the MPEP 819 below.

Election/Restriction

4. This application contains claims directed to the following patentably distinct species of the claimed invention:

a) Fig. 1, is directed to species #1 in which the specific element is a MOS type analog amplifier circuit 104, as claimed in independent claims 90 and 98.

b) Figs. 3, 10, 13 are directed to species #2 in which the specific element is a first MOS transistor and a second MOS transistor, as claimed in independent claims 91 and 99.

c) Figs. 3, 15, 37 and 42 are directed to species #3 in which the specific elements are a first MOS transistor a second MOS transistor and a resistor, as claimed in independent claims 92 and 100.

d) Fig. 12 is directed to species # 4, the specific element is a third MOS transistor in which a drain electrode is connected to the pixel electrode, as claimed in independent claims 93 and 101.

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Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, (enter) generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

5. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

6. MPEP 819 Office Generally Does Not Permit Shift

The general policy of the Office is not to permit the applicant to shift to claiming another

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invention after an election is once made and action given on the elected subject matter. Note that the applicant cannot, as a matter of right, file a request for continued examination (RCE) to obtain continued examination on the basis of claims that are independent and distinct from the claims previously claimed and examined (i.e., applicant cannot switch inventions by way of an RCE as a matter of right). When claims are presented which the examiner holds are drawn to an invention other than the one elected, he or she should treat the claims as outlined in MPEP § 821.03.

Where the inventions are distinct and of such a nature that the Office compels restriction, an election is not waived even though the examiner gives action upon the patentability of the claims to the nonelected invention. *Ex parte Loewenbach*, 1904 C.D. 170, 110 O.G. 857 (Comm'r Pat. 1904) and *In re Waugh*, 135 F.2d 627, 57 USPQ 371 (CCPA 1943).

Where a continued prosecution application (CPA) filed under 37 CFR 1.53(d), is a continuation of its parent application and not a divisional, or where a File Wrapper Continuation (FWC) filed under former 37 CFR 1.62, is a continuation of its parent application and not a divisional or C-I-P, an express election made in the prior (parent) application in reply to a restriction requirement carries over to the CPA or FWC application unless otherwise indicated by applicant. In no other type of continuing application may an election carry over from the prior application.

Where there is no indication in the CPA or FWC application that a change in election is desired, the examiner's first action should include a repetition of the restriction requirement made in the prior application to the extent it is still applicable in the CPA or FWC application and a statement that prosecution is being continued on the invention elected and prosecuted by applicant in the prior

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application. Examples of what is meant by the phrase "otherwise indicated by applicant" would be where the CPA or FWC is filed as (A) a divisional or (B) a continuation and includes an amendment filed prior to first action in the CPA or FWC adding claims to an invention not previously elected. In each of these examples the examiner should make a new restriction requirement in the first action.

819.01 Office May Waive Election and Permit Shift

While applicant, as a matter of right, may not shift from claiming one invention to claiming another, the Office is not precluded from permitting a shift. It may do so where the shift results in no additional work or expense, and particularly where the shift reduces work as by simplifying the issues. Ex parte Heritage, Pat. No. 2,375,414 decided January 26, 1944. If the examiner has accepted a shift from claiming one invention to claiming another, the case is not abandoned. Meden v. Curtis, 1905 C.D.272, 117 O.G. 1795 (Comm'r Pat. 1905).

Conclusion

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks Washington, D.C. 20231

or faxed to:

(703) 308-9051, (for formal communications intended for entry)

Or:

(703)308-6606 (for informal or draft communications, please label

"PROPOSED" or "DRAFT"

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington. VA.,

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Sixth Floor (Receptionist).

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fritz Alphonse whose telephone number is (703) 308-8534.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steve Saras, can be reached on (703) 305-9720.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900.



F. Alphonse

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December 30, 2003



STEVEN SARAS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600